IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 416 OF 2006

Smt.Rita V. Katyal. ... Applicant.

V/s.

1. Shri Kanayalal Mirani.

2. State of Maharashtra. ... Respondents.

Pravin D. Patel for the applicant.

S.V.Marwadi for respondent No.1.

K.V.Saste, APP for respondent No.2- State.

CORAM: V.C.DAGA, J.

DATED: 3rd September 2007.

P.C.:

. Heard learned counsel for the applicant and learned A.P.P. for the State.

. Perused revision application.

2. This revision application is directed against the order dated 29th August, 2006 passed by the Sessions Judge, Greater Bombay in Sessions Case No.360/2005, whereby the judgment and order dated 8th July, 2005 passed by the Metropolitan Magistrate, 4th Court, Andheri came to be confirmed; whereby the learned Magistrate convicted the applicant-accused

under section 255(2) of Code of Criminal Procedure, 1973 ("Cr.P.C." for short) for the offence punishable under section 138 of the Negotiable Instruments Act ("N.I.Act" for short) and sentenced her to suffer simple imprisonment till rising of the Court with further direction to pay compensation of Rs.6,25,000/- to the complainant under section 357(3) of Cr.P.C. and in default to suffer six months simple imprisonment.

3. The factual matrix reveals that respondent No.1, proprietor of M/s.S.K.Metal & Electrical Industries was supplying raw materials to the applicant. The transactions in question are of the financial year 1997-98. The goods supplied and delivered were backed by Invoice Nos.171 to 175 with Delivery Challen Nos.171/97-98 to 173/97-98 dated 27th January, 1998 and Nos.174/97-98 and 175/97-98 dated 28th January, 1998 for the amount of Rs.94,627/-, 96,967/-, 94.140/-, 59,411/- and 40,155/-, i.e. total amount of 3,85,300/-.

4. That as per the regular trade practice the respondent No.1 discounted the said bills with his banker; Indian Overseas Bank and borrowed some advances against the said bills. The said bills were duly accepted by the applicant on due dates, the details of which are to be found in para-4 of the

revision application, which are not in dispute.

5. The applicant in discharge of his liability has made payment to respondent No.1 by issuing five cheques bearing Nos.524841 to 524845 of different dates for the amounts mentioned in the cheques, the total value of which matches with the value of the goods supplied.

6. The cheques were drawn in the name of "Indian Overseas Bank A/c. S.K.Metal & Ele. Ind".

7. The aforesaid cheques were bounced on 30th April, 1998 with the remark "EXCEEDS ARRANGEMENT".

8. The respondent No.1 issued notice to the applicant under section 138 of the N.I.Act, service of which was held good. The applicant did not comply with the requirements of the notice. Consequently, complaint under section 138 of the N.I.Act came to be filed in the Court of Metropolitan Magistrate, 22nd Court, Andheri, Mumbai.

9. The applicant pleaded not guilty. The witnesses were examined from both sides. The

applicant- accused did not deny receipt of goods. He did not deny acceptance of bills of exchange and issuance of cheques referred to hereinabove. He also did not deny that the cheques were bounced. His defence was that the goods supplied were defective. However, till date, no suit has been filed by the applicant against respondent No.1 to claim damages or remission in the price of the goods. The limitation for such claim has already expired. Another defence sought to be raised by the applicant was that the cheques were issued in favour of Indian Overseas Bank and the bank alone was entitled to file complaint and not respondent No.1. These contentions raised by the applicant neither found favour with the trial Court nor with the lower appellate Court. The very same contentions are reiterated before this Court by the learned counsel for the applicant.

10. The learned counsel for the applicant circulated compilation of documents and the evidence recorded. All these documents are in conformity with the pleadings of respondent No.1 incorporated in the complaint.

11. I was taken through the judgments of both the

Courts below. Having examined the judgments of both the Courts below in the light of the submission advanced, none of the submissions of the applicant hold water. Both the Courts below were perfectly justified in convicting the applicant and directing payment of compensation. Mere issuance of cheques payable to the Indian Overseas Bank A/c. S.K.Metal & Industries does not make the bank alone entitled to retain the amount of the cheques on its own account. The amount has to go to the account of the borrower who is supposed to have borrowed loan from the bank against the discounted bills of exchange.

12. The name of payee itself shows that the amounts were to be credited to the account of respondent No.1 maintained with the Indian Overseas Bank only in discharge of the liabilities.

13. So far as defective goods are concerned that cause of action is not available to the present applicant, especially, in the present litigation since no civil suit has been filed by the applicant against the respondent No.1. No cause of action as on date can be said to be surviving against respondent No.1.

14. The view taken by both the Courts below is a reasonable and possible view. No fault can be found with the view taken. Not a single perversity in the impugned orders either in appreciation of evidence or documents is brought to my notice. The revision application is without any substance and is liable to be dismissed.

15. The applicant has already undergone the sentence and has deposited the amount of compensation. In that view of the matter, respondent No.1- the original complainant would be entitled to withdraw this amount. The said amount be paid to the respondent No.1- original complainant, by drawing payees' a/c cheque in her favour, by the Court with which the deposit may be lying.

16. In the result, revision application is dismissed in limine terms of this order with no order as to costs.

JUDGE